IN THE HIGH COURTOF PUNJAB AND HARYANA, CHANDIGARH.

CWP No. 4619 of 2005
Date of decision: 11.12.2008

Jarnail Singh and others.

....Petitioners.

vs.

Gram Panchayat, Mahan Singh Wala and others

.. ...Respondents

CORAM: HON'BLE MR.JUSTICE J.S.KHEHAR.
HON'BLE MS.JUSTICE NIRMALJIT KAUR.

Present: Mr.Akshay Bhan, Advocate, for the petitioners.

Mr.Tribhuwan Singla, Advocate, for respondent No.1.

Mr.P.C.Goel, Addl.A.G.Punjab, for respondent Nos. 2 to 5.

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J.S.KHEHAR,J. (Oral)

Learned counsel for the parties are agreed that an eviction petition was filed by respondent No.1 i.e., Gram Panchayat Mahan Singh Wala, against the petitioners seeking their ejectment from land owned by the Gram Panchayat under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Common Lands Act"). The petitioners, during the course of the determination of the application filed by the Gram Panchayat Mahan Singh Wala, asserted their ownership over the land in question based on an order passed by the consolidation authorities dated 24.9.1996. It would be pertinent to mention

that the aforesaid order had been passed by the consolidation authorities in exercise of powers vested in them under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation)Act, 1948. Since the issue of title could not have been adjudicated upon by the consolidation authorities, respondent No.1 i.e., the Gram Panchayat Mahan Singh Wala, moved an application under Section 11 of the Common Lands Act, for a declaration to the effect that the Gram Panchayat was owner of the land in question. The Collector,Sangrur, adjudicated upon the aforesaid controversy by an order dated 23.12.1998 (Annexure P2). The Collector, Sangrur, arrived at the conclusion that the Gram Panchayat was the owner of the land in question. Having done so, the Collector,Sangrur, also recorded the following observations while disposing of the application filed by the Gram Panchayat Mahan Singh Wala under section 11 of the Common Lands Act:-

> "..... and also by exercising the powers under Section 4 and 5 P.P. Act and Section 7 of the Punjab Village Common Lands (Regulation) Act, 1991 direct the respondents to vacate the land in dispute. This order will apply on petition filed by Gram Panchayat under Section 4 and 5 of P.P.Act and Section 7 of the Punjab Village Common Lands Act, 1961, vide case Nos.914,915, 916, 917,920,921,922 and 923 dated 21.8.95...".

The observations extracted hereinabove, recorded by the Collector, Sangrur, while disposing the application filed under section 11 of the Common Lands Act, is subject matter of challenge at the hands of the petitioner.

It is the vehement contention of the learned counsel for the petitioners,that proceedings under section 7 of the Common Lands Act, are separate and distinct from the proceedings under section 11 of the said Act. While adjudicating upon the controversy raised by the Gram Panchayat

village Mahan Singh Wala, under section 11 of the Common Lands Act, the Collector, Sangrur, had no jurisdiction whatsoever to further determine the issue of ejectment. This, according to the learned counsel for the petitioners, could have been determined in furtherance of the proceedings initiated by the Gram Panchayat Mahan Singh Wala under section 7 of the Common Lands Act.

The aforesaid factual/legal position is not disputed by the learned counsel representing respondent No.1. We are also satisfied, that while disposing of the claim of ownership raised by the Gram Panchayat under section 11 of the Common Lands Act, the Collector, Sangrur, could not have gone ahead and could not have dealt with *suo moto* the proceedings initiated under section 7 of the Common Lands Act. This view of ours flows from the mandate of the first proviso to section 7 of the Common Lands Act. To understand the effect of first proviso to section 7 of the Common Lands Act, the same is extracted hereunder:-

> " **7. Power to put panchayat in possession of shamilat deh:**(1). The Collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the State Government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the collector may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887.
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> Provided that if after receipt of the application and before the Panchayat is put in possession of the land or other

> immovable property in the shamilat deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim under section 11 and till the question is so determined, the application shall remain pending.
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> XXX XXX XXX".

The relevant expression used in section 7 of the Common Lands Act, which would have an effect on the submission advanced by the learned counsel for the petitioners is "... and till the question is so determined the application shall remain pending". It is, therefore, imperative to conclude that if a question relating to the issue of title is raised during the pendency of the proceedings under section 7 of the Common Lands Act, then proceedings under section 7, shall remain in abeyance to await the finalisation of the proceedings under section 11 of the Common Lands Act, and would re-initiate/re-commence after the decision is rendered under section 11 of the Common Lands Act. By the impugned order dated 23.12.1998 (Annexure P2), the Collector, Sangrur, adjudicated on the claim of the rival parties under section 11 of the Common Lands Act. It is only thereafter, that the proceedings had to re-commence under section 7 of the Common Lands Act rather than adopting the natural procedure flowing out of the first proviso to section 7 of the Common Lands Act, the Collector,Sangrur, without affording any opportunity to the petitioners to raise any defence (if available) *suo moto* disposed of the application under section 7 of the Common Lands Act.

For the reasons recorded hereinabove, we are satisfied that part of the order of the Collector, Sangrur, dated 23.12.1998 (Annexure P2)

already extracted in the opening paragraph of this order deserves to be expunged therefrom. Ordered accordingly.

Since the order passed by the Collector, Sangrur, has itself been partly set aside by us, we are satisfied, that the subsequent appellate order dated 28.1.2005 passed by the Director Village Development and Pancahyat,Punjab, exercising the powers of the Commissioner under the Common Lands Act, deserves to be set aside, the same is accordingly also set aside.

In the facts and circumstances, noticed hereinabove, proceedings under section 7 initiated by the Gram Panchayat village Mahan Singh Wala will re-commence. We also consider it just and appropriate to grant liberty to the petitioners to prefer a fresh appeal on merits limited to the issue on the question of title, if they are so advised, to challenge the order dated 23.9.1998(Annexure P2), as has been modified by the instant order.

Writ petition disposed of in the aforesaid terms.

(J.S.Khehar)
Judge

(Nirmaljit Kaur)
Judge

December 11, 2008

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